

IN THE
United States Circuit Court of Appeals

For the Ninth Circuit

In the Matter of R. S. MILLER,
A Bankrupt.

OLMSTED-STEVENSON COMPANY
(a corporation),
Petitioner,

vs.

R. S. MILLER,
Respondent.

PETITION FOR A REHEARING.

OLMSTED-STEVENSON COMPANY,
Petitioner.

JOHN B. CLAYBERG,
Pacific Building, San Francisco,
Its Attorney.

Filed

APR 14 1916

Filed this.....day of April, 1916.

F. D. Monckton

FRANK D. MONCKTON, Clerk.

By.....Deputy Clerk.

No. 2628

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R. S. MILLER,	<i>Respondent.</i>

PETITION FOR A REHEARING.

To the Honorable William B. Gilbert, Presiding Judge, and the Associate Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Now comes Olmsted-Stevenson Company, the petitioner in the above entitled action, and files this its petition for a rehearing and re-argument of the petition for revision and review of the decision of the District Court of the United States in and for the District of Montana, and for the reversal of the judgment of this court upon said petition for revi-

sion and review, made and entered by this court on the 6th day of March, 1916, upon the following grounds for the following reasons:

I.

That the prevailing opinion, filed March 6, 1916, upon which said judgment has been entered, seems to be based upon the proposition that the federal cases cited and relied upon by this petitioner at the hearing of said petition for said revision and review, were and are contrary to and in conflict with the decisions of the several Supreme Courts, of the several States which were within the districts in which said federal cases arose and were decided. That no opportunity has been given counsel for this petitioner to argue such questions before this court or to be heard thereon; that such questions were not raised or argued either in the briefs filed in this court by respondent or in the argument of counsel for respondent upon the hearing by this court upon said petition for revisal and review.

II.

That the Honorable Judges of this court on or about the 7th day of February, 1916, filed opinions herein, and by virtue of the prevailing opinion thus filed, the order and judgment of the District Court of the United States in and for the District of Montana, sought to be revised and reviewed by said petition, was reversed, and a judgment entered by

this court in favor of this petitioner reversing the same; that on or about the 11th day of February, 1916, this court made and entered its following order:

“ORDER VACATING JUDGMENT OF THIS COURT, ETC.

Good cause therefor appearing, it is ordered that the judgment of this court that was filed and entered, and the opinion and dissenting opinion that were filed in the above entitled matter on the 7th day of February, A. D. 1916 be, and hereby are vacated and set aside and that said opinion and dissenting opinion be withdrawn by the court from the files herein, and that the petition for revision herein shall stand submitted to the court for consideration and decision as if said judgment, opinion and dissenting opinion had not been rendered.”

That thereafter and on or about the 6th day of March, 1916, the Honorable Judges of this court, filed opinions herein, and by virtue of the prevailing opinion thus filed, the judgment and decision of the District Court of the United States in and for the District of Montana was affirmed, and judgment ordered to be entered affirming the same; that it is apparent from the foregoing that two judges of this court, who heard the arguments upon said petition for revision and review, first agreed and decided that the judgment of the District Court of the United States in and for the District of Montana, sought to be revised and reviewed, should be reversed, and filed an opinion to that effect, and that thereafter one of the judges so deciding, felt obliged to and did change his opinion and agreed to the affirmance of the judgment and order of the

District Court of the United States in and for the District of Montana.

While we do not desire to be understood as questioning the power of this court to take the proceedings recited above, but we respectfully submit that petitioner should have been permitted to argue all questions upon which any member of this court felt obliged to change his opinion, before such member announced such contrary opinion. We submit that in all fairness when this court ordered a re-submission, such re-submission should have been upon a re-argument by respective counsel, at which such counsel could have had an opportunity of presenting their views.

Dated, San Francisco,
April 12, 1916.

OLMSTED-STEVENSON COMPANY,
Petitioner.

JOHN B. CLAYBERG,
Its Attorney.

CERTIFICATE OF COUNSEL.

I hereby certify that I am counsel for petitioner in the above entitled cause and that in my judgment the foregoing petition for a rehearing is well founded in point of law as well as in fact and that said petition is not interposed for delay.

JOHN B. CLAYBERG,
Counsel for Petitioner.